IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 25TH JUNE 2007 / 4TH ASHADHA 1929

WA.No.567 of 2004

AGAINST THE JUDGEMENT IN W.P.(C).NO.37916/2003-L DATED 02/12/2003

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APPELLANTS: RESPONDENTS 1 AND 2 IN THE WP(C):-

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1. THE EXCISE RANGE OFFICER, KARUNAGAPPALLY.

2. THE ASST.EXCISE COMMISSIONER, KOLLAM.

BY SENIOR GOVERNMENT PLEADER SMT.MEERA.

RESPONDENT: PETITIONER IN THE WP(C):-

SUDHEESH S/O. SUGATHAN,
KOTHAPPALLIL VEETTIL, KOTTARAKKARA REP.BY HIS
POWER OF ATTORNEY HOLDER VIJAYAN G.,
THYKOOTTATHIL HOUSE, EDAKKADAM P.O.,
KAREEPRA, KOLLAM.

BY ADV. SRI.ALEXANDER GEORGE
SRI.DILIP MOHAN

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 25/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

H.L.Dattu,C.J. & K.T.Sankaran,J.

W.A.No.567 of 2004

Dated, this the 25th day of June, 2007

JUDGMENT

K.T.Sankaran,J.

The respondents in W.P.(C).No.37916 of 2003 are the appellants in the Writ Appeal. On 26.07.2003, the Excise Inspector, Karunagappally seized a MahindraJeep bearing registration No.KL-7/N 5805 while it was found that 350 litres of arrack was being transported in the vehicle. A crime was registered under Sections 8(1) and 8(2) of the Abkari Act. Proceedings under Section 67 of the Abkari Act were initiated. The registered owner of the vehicle as per the records was one Vijayan. Show Cause notice was issued in the confiscation proceedings to Vijayan. Vijayan appeared and stated that he had sold the vehicle to Geetha P.Kurup and he had no objection in confiscating the vehicle.

2. While so, one Sudheesh, claiming to be the owner of the Mahindra Jeep, filed the writ petition through his Power of Attorney for the following reliefs:

> "(i) issue a Writ of Mandamus or any other appropriate writ, direction or order directing the 2nd respondent to release the Mahindra Jeep bearing registration No.KL-7/N 5805 to the petitioner forthwith.
>
> (ii) issue such other direction that this Hon'ble Court may deem fit and proper in the facts and circumstances of the case".

3. The learned Single Judge disposed of the writ petition with a direction to the respondents, appellants herein, to value the vehicle and give a valuation report to the petitioner in the writ petition within a period of one week from the date of production of a copy of the judgment. The petitioner in the writ

petition was given liberty to furnish bank guarantee for the value of the vehicle and a direction was issued that on compliance of the condition, the vehicle shall be released to the petitioner in the writ petition.

4. The contention of the learned Government Pleader is that a vehicle cannot be released to a person other than the real owner of the property under Rule 4 of the Kerala Abkari (Disposal of Confiscated Articles) Rules, 1996. It is submitted that the proceedings are not over under Section 67B of the Abkari Act. The registered owner of the vehicle - Vijayan - disowns the ownership and he says that Geetha P.Kurup is the owner of the vehicle. There is no case for the appellants that notice was given to Geetha P.Kurup. Sudheesh, through his Power of Attorney, was claiming the ownership of the vehicle. Confiscation order and a final decision under Rule 4 of the Kerala Abkari (Disposal of Confiscated Articles) Rules can be rendered only after a finding is entered into as to who is the real owner of the vehicle. The appellants shall issue notice to Geetha P.Kurup and also afford an opportunity to the writ petitioner and Vijayan to put forward their claims, if any, and pass final orders under Rule 4 of the Kerala Abkari (Disposal of Confiscated Articles) Rules in accordance with law.

The Writ Appeal is disposed of as indicated above.

H.L.Dattu
Chief Justice

K.T.Sankaran
Judge

vku/-